EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

No. 91-1084

Supreme Court, U.S.
FILED
JAN 23 1992
OFFICE OF THE CLERK

In the

Supreme Court of the United States

October Term, 1991

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all citizens of Minnesota similarly situated; Joan Growe, Secretary of State of the State of Minnesota; Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota; the Seventy-Seventh Minnesota State House of Representatives; and the Seventy-Seventh Minnesota State Senate,

Appellants,

vs.

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated; Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth; and Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Appellees.

Appeal from the United States District Court
for the District of Minnesota

APPELLANTS' RESPONSE TO APPELLEES' MOTION TO DISMISS THE APPEAL AND AFFIRM AND REINSTATE THE ORDER OF STAY OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

Alan W. Weinblatt
(Counsel of Record)
WEINBLATT AND DAVIS
1616 Pioneer Building
336 North Robert Street
St. Paul, MN 55101
Telephone: (612) 292-8770

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

COUNTER STATEMENT OF FACTS 1

ARGUMENT 2

CONCLUSION 5

TABLE OF AUTHORITIES

CASES

Scott v. Germano., 381 U.S. 407, 85 S.Ct. 1525 (1965).

LaComb v. Growe, 541 F.Supp. 145 (D. Minn. 1982)

Atlantic Coastline Railroad v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 295 (1970)

STATUTES

Uniform Certification of Questions Act, Minn. Stat. §480.061.

COUNTER STATEMENT OF FACTS

Appellants Respondents Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein and Theodore Suss, individually and on behalf of all citizens of Minnesota similarly situated, respectfully submit that the Respondents' Statement of Facts set forth in their Motion to Dismiss Appeal and Affirm, etc., contains certain omissions which these Appellants believe to be relevant to the issues remaining before the Court. Those facts are as follows:

1. The Minnesota state court action entitled Cotlow, et al. v. Growe, et al., Court File Number C8-91-985, was filed on January 24, 1991. The two federal court actions were filed subsequently. Emison v. Growe was filed on or about March 18, 1991 and Benson v. Growe was filed on or about August 14, 1991.

2. The Cotlow, et al. v. Growe, et al. state court plaintiffs were not part of either federal case on July 22, 1991 when the motion asking the United States District Court to defer was brought.

3. The Emison plaintiffs in the federal court action are represented by the same legal counsel that represents the Intervening Plaintiffs in the state court action.

4. The United States District Court for the District of Minnesota has appointed special masters to draw plans of legislative and congressional redistricting even though the Minnesota state Special Redistricting Panel was in the process of developing a standby legislative plan and had stated in its pretrial orders that it would consider congressional redistricting

plans as of January 17, 1992. Appendix to Jurisdictional Statement at A-54.

5. The United States District Court for the District of Minnesota determined that the Minnesota Supreme Court would not have sufficient time to hear and decide any appeal from its Special Three Judge Redistricting Panel without inquiring of the state court if it in fact could hear any such appeal in a timely fashion. See Uniform Certification of Questions Act, Minn. Stat. §480.061.

6. The Order of the United States District Court issued August 21, 1991 refusing to defer to the Minnesota State Special Three Judge Redistricting Panel, itself, was in direct contravention of the holding and purposes of this Court's decision in Scott v. Germano., 381 U.S. 407, 85 S.Ct. 1525 (1965).

7. Neither the citizens of Minnesota nor the Minnesota Legislature felt that the State Redistricting Panel's Order of November 21, 1991, had any "intimidating" effect on the 1992 legislative session. The Governor of Minnesota had long before told the United States District Court that he would veto any plan based upon the previously adopted redistricting law. See attached Affidavit of Arne Carlson (Exhibit A).

ARGUMENT

Respondents argue in their Motion to Dismiss or Affirm that the December 5, 1991 stay was entered to "protect federal jurisdiction and prior District Orders" and "to insure that the state legislature was given adequate opportunity to adopt a valid redistricting plan in a timely fashion." The second of these

reasons is now totally moot. The Minnesota legislature adopted amendments to its 1991 redistricting plan during the recently concluded short session. Those amendments included essentially the same modifications that had been adopted by the Special State Redistricting Panel in its December 9, 1991 final judgment. The governor of Minnesota, however, vetoed that legislation just as he had sworn he would in his affidavit filed in the District Court below. See Attached Affidavit of Arne Carlson. Thus the "adequate opportunity" which the Minnesota legislature did not ask for in the first place has come and gone with no successful action.

The other alleged basis for the December 5, 1991 stay (i.e. "in aid of jurisdiction") is totally without legal justification. No federal court stay of the state court's final judgment was necessary to protect concurrent federal jurisdiction for two reasons. First, the August 21, 1991 Order of the District Court was itself a violation of the rule of Scott v. Germano, 381 U.S. 407, 85 S.Ct. 1525 (1965), to the extent that the federal court refused to defer to a previously filed and speedily heard state court redistricting case. Thus it is blatant "bootstrapping" to now argue that the December 5, 1991 Order was necessary to protect the efficacy of the August 21, 1991 Order.

Second, since the state court had, prior to December 5, 1991, indicated its intent to issue a final judgment forthwith, that judgment should have been respected by the federal District Court, subject to appeals to the Minnesota Supreme Court and ultimately to this Court. The federal District Court should not have sat in

review of the state court decision. Since a valid plan of legislative redistricting has now been promulgated by the Minnesota state courts (subject to appeal), the federal court actions (Emison v. Growe, No. 4-91-202 and Benson v. Growe, No. 4-91-603) with respect to legislative redistricting should now be dismissed.

As to congressional redistricting, the District Court should be directed to enter an Order fixing a reasonable time within which the appropriate agencies of the State of Minnesota, including its Special Redistricting Panel and its Supreme Court may validly adopt congressional districts provided that the same be accomplished within ample time to permit such plan to be utilized in the 1992 congressional elections. Scott v. Germano, supra at 409.

A bill creating new congressional districts with a zero population deviation and based upon (a) present state policies and (b) the court ordered plan of 1982. LaComb v. Growe, 541 F.Supp. 145 (D. Minn. 1982), as legislatively modified to reflect population shifts was adopted by the legislature on or about January 9, 1992 but was vetoed by the governor on that same date. The Special State Redistricting Panel is now considering a motion filed by Appellants Cotlow et al., joined by the State of Minnesota and its local election officials, to adopt that bill as the state court's plan of congressional redistricting or to modify it. Hence there is no further need for the District Court to exercise "oversight" with respect to the state court proceedings.

These Appellants respectfully request the United States Supreme Court to issue an opinion directing the United States

District Court for the District of Minnesota to stay its hand from further processing of the cases before it upon the authority of Scott v. Germano, 381 U.S. 407, 85 S.Ct. 1525 (1965), and Atlantic Coastline Railroad v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 295 (1970). Appellants request this relief because it appears that the District Court continues to search for ways to override the state judiciary (see e.g. attached sua sponte Order of January 3, 1992, directing briefing with respect to "political gerrymandering," Exhibit B).

The federal special masters continue to draw legislative and congressional plans. The court continues to issue orders to process the federal cases and the people of Minnesota are being asked to pay for redistricting by another body.

CONCLUSION

The legislature attempted in good faith to fix Laws 1991, Chapter 246, and to adopt a plan of congressional redistricting. Now that the governor has vetoed those plans the state court standby plans are effective. There is simply no need for the federal District Court to issue any plan. The court below needs to be so instructed.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

IN RE: REAPPORTIONMENT LITIGATION

James Emison, et al.,

Plaintiffs,

v.

Joan Anderson Growe, Secretary of State of State of Minnesota, et al.,

Defendants.

MASTER DOCKET
CIVIL #4-91-202

Duane Benson, et al.,

Plaintiffs,

v.

Joan Growe, Secretary of State of State of Minnesota,

Defendant.

CIVIL #4-91-603

AFFIDAVIT OF GOVERNOR ARNE H. CARLSON

1. I am the Governor of the State of Minnesota.

2. It is my understanding that this Court in its Order dated August 21, 1991, has noted the intention of the Defendants Minnesota Legislature and Minnesota Secretary of State to amend Laws Minnesota, 1991, Chapter 346 in devising a legislative reapportionment plan that will be presented to the legislature in January, 1992.

3. During the 1991 session of the Minnesota legislature, the legislature passed Senate File 1571, a bill redrawing the state

EXHIBIT A

legislative districts. I attempted to veto that bill because, in my opinion, it contained fundamental problems, including what I viewed as obvious unconstitutional provisions as well as numerous other technical and substantive flaws which affected the overall fairness, or lack thereof, of the plan to all Minnesota citizens.

4. Even though the Ramsey County District Court ruled that my attempt to veto Senate File 1671 was ineffective, and this legislation was enrolled as Chapter 146 of the 1991 Minnesota Session Laws, my fundamental and serious concerns about the bill remain. Therefore, I will not provide my needed signature as Governor and will in fact veto any bill which I receive for consideration from the Minnesota legislature from the 1992 session pursuant to Section 23 of Article 4 of the Minnesota Constitution, unless such bill: (a) changes the basic provisions of Chapter 246 in a way which corrects the fundamental problems I believed that the structure of the bill had when I first attempted to veto Senate File 1671; and (b) provides the essential element of fairness needed for all Minnesotans in any state legislative reapportionment plan.

FURTHER AFFIANT SAYETH NAUGHT.

Governor Arne H. Carlson

Subscribed and sworn to before me
this 10th day of October, 1991.

Donnette Hilton
Notary Public

\\stvdoc\affcar.ion.com

DONNETTE L. HILTON
NOTARY PUBLIC—MINNESOTA
DAKOTA COUNTY
My Comm. Expires Apr 4, 1996

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

CIVIL #4-91-202

James Emison, Judy Fairbanks, Marie Iverson, Ken Dean, Steve Castillo, Lew Freeman, and Yao Lo, individually and on behalf of all Citizens and Voters of the State of Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated,

Intervening Plaintiffs,

ORDER

v.

Joan Growe, Secretary of State of the State of Minnesota; Mark Lundgren, Carver County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendants,

and

The Seventy-seventh Minnesota State House of Representatives; and the Seventy-seventh Minnesota State Senate,

Defendant Intervenors,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State

FILED JAN 03 1992
FRANCIS E. COSAL, CLERK
JUDGEMENT ENTERED
DEPUTY CLERK'S INITIALS

EXHIBIT B

of Minnesota,

Defendant
Intervenor.

AND

Duane Benson, Terry Dempsey, Delores Hettig, Richard Harmon, David E. Peterson, E.M. Patricia Pidcock, and Frank Ringsmuth,

Plaintiffs,

v.

Joan Growe, Secretary of State of the State of Minnesota,

Defendant,

and

Patrick O'Connor, Hennepin County Auditor, individually and on behalf of all County Auditors of the State of Minnesota,

Defendant
Intervenor.

Before CHIEF JUDGE LAY, Circuit Judge, MacLAUGHLIN, District Judge, and MAGNUSON, District Judge.

The scheduled hearing set for January 27, 1992, at which time the parties are to report on the final efforts of the legislative plan dealing with the state redistricting and congressional redistricting is hereby vacated; the hearing shall be held at 9:30 a.m. on February 4, 1992, on the fifth floor of the Federal Building, 316 North Robert Street, St. Paul, Minnesota, in courtroom number one.

Each of the parties is asked to respond to the following inquiry: In what specifics do you find: (a) the state redistricting plan, and (b) the congressional redistricting plan as proposed by the opposing party, to be unfair, including any alleged "gerrymandering" which you find to be inherent within each of the proposed plans.

Each party is to submit its response to the court's inquiry by January 10, 1992. Each party may file a reply to such response on or before January 17, 1992.

It is so ordered.

Dated: January 3, 1992.

By the Court:

Donald P. Lay